



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

October 5, 1951

Hon. Homer Garrison, Jr., Director
Department of Public Safety
Camp Mabry
Austin, Texas

Opinion No. V-1300

Re: The right of Texas Rangers
and other Texas peace offi-
cers to enter Big Bend
National Park to investi-
gate alleged violations of
Texas Penal Laws.

Dear Colonel Garrison:

You have asked our advice concerning the propriety of Texas Rangers and other Texas peace officers entering Big Bend National Park for the purpose of detecting and investigating possible crimes against the laws of the State of Texas. You are particularly concerned with the question of the authority of such officers to make investigations within the boundaries of the park in view of the cession by Texas of jurisdiction over the park to the United States for national park purposes.

The deed of cession was executed on December 30, 1943, and expressly provides that the State of Texas does "hereby cede to the United States of America exclusive jurisdiction over the above described tracts or parcels of land" with certain exceptions with respect to service of civil and criminal processes, the levying, assessing, and collecting of certain taxes, and reserving to the people residing in the park the right to vote at elections within Brewster County.

Immediate interest in the questions presented is occasioned by the mysterious disappearance of a Texas citizen in the vicinity of the park under circumstances suggesting the propriety of a thorough investigation to determine the circumstances of the disappearance and the possibility of criminal acts having been committed against a Texas citizen and the laws of the State of Texas. You state that the circumstances of the case have been brought

to your attention with the request that you take steps to investigate the matter. Because of certain evidence found within the boundaries of the park, it is necessary for the Texas peace officers to go into the park in order properly to carry on their investigation.

Because of the deed of cession above mentioned, a question has arisen in your mind as to whether State officers should assume the investigation inside the boundaries of the park and as to the duty of Texas peace officers to conduct such investigation within such boundaries. Particularly, you desire to know whether Texas peace officers have the authority to enter the boundaries of the Big Bend National Park and there conduct an investigation for the purpose of ascertaining whether an alleged crime against the laws of the State of Texas actually occurred, and if so the place where the crime was committed.

The Big Bend National Park is located wholly within the boundaries of the State of Texas and more particularly within the boundaries of Brewster County, Texas. We know of no Federal law or regulation pertaining to the operation or government of a national park which would categorically prevent such a criminal investigation by State officers. It is reasonable to assume that no statute, rule, or policy of the Federal Government applicable to the maintenance of national parks is intended to prevent a State agency from ferreting out violations of the State law or from entering the park for that purpose.

Conflicts of jurisdiction, whether political or judicial, can arise only in connection with specific factual situations wherein conflicting claims in the name of one or the other of the governments are involved. Reconciliation of such conflicts involves examination of the law relating to the particular claims and the facts on which they are based. Questions as to what officers may arrest and detain prisoners to the exclusion of others are likewise dependent on the basis of the arrest and the facts surrounding and leading up to the arrest. The jurisdiction of courts to hear charges of crime may depend on the place where the crime or any part thereof was committed, which cannot be determined until after an investigation is made to determine those matters.

This latter statement is clearly illustrated in the case of Lasher v. State, 17 S.W. 1064 (Tex. App.

1891), in which the defendant was tried in the State court for committing the act of forgery in Fort McIntosh. The Federal Government had been ceded exclusive jurisdiction to the land comprising Fort McIntosh with the State retaining concurrent jurisdiction only so far as was necessary for all process, civil or criminal, issued under the authority of the State or of any of the courts or judicial officers thereof, to be executed by the proper officers of the State on any person amenable to the same within the limits of the land so ceded. The Court in its original opinion, reversed and dismissed the prosecution, saying:

" . . . In Com. v. Clary, 8 Mass. 72, it was held that 'the courts of the commonwealth cannot take cognizance of offenses committed upon lands in the town of Springfield which have been purchased by the United States for the purpose of erecting arsenals, etc., to which the consent of the commonwealth was granted,' etc., and that decision has subsequently been adopted and followed in the circuit court of the United States. U. S. v. Cornell, 2 Mason, 60. And in U. S. v. Davis, 5 Mason, 356, it was held that a reservation in a cession of 'concurrent jurisdiction' to serve state processes, civil and criminal, in the ceded place, does not exclude the exclusive legislation or exclusive jurisdiction of the United States over the ceded place. It merely operates as a condition of the grant. Crimes committed in such localities are within the jurisdiction of the United States courts, and, under the express provisions of the United States statutes, are made liable to and receive the same punishment as the laws of the state in which such forts, dock-yards, navy-yards, arsenals, armories, or magazines, or other place ceded as aforesaid is situated provide for in like offenses when committed within the boundary of any county of such state. In other words, the crimes are triable in the courts of the United States, but are punished as is provided by the state law. . . ."

On motion for rehearing the court set aside its judgment of dismissal and remanded the case, holding:

"The reason for this action is that the indictment charges an offense committed in Webb county. The evidence showing that it was committed inside of Ft. McIntosh is circumstantial. It is suggested by the assistant attorney general that possibly the state on another trial might be able to show that it was in fact committed in Webb county, but outside the limits of Ft. McIntosh. In view of the possibility that such might be the case, judgment will be rendered reversing the case, and remanding it for another trial in the lower court. Motion for rehearing granted, judgment reversed, and cause remanded."

In remanding the case, the Court in effect said that before the Court can decide the case it must know where the offense occurred, and this can only be determined by an investigation of the locales where circumstances tend to show the offense occurred.

We cannot, therefore, categorically define the authority of Texas Rangers or peace officers in general terms applicable to any and all situations which might arise involving the territory of Big Bend National Park. It is our opinion, however, that Texas officers, acting peacefully, may enter Big Bend National Park for the purpose of determining whether a crime has been committed over which the State has jurisdiction.

In County of Allegheny v. McClung, 53 Pa. 482 (1866), an explosion occurred within a Federal arsenal in the State. The exclusive jurisdiction over the arsenal had been ceded by the State to the Federal Government, but the State had retained the right of concurrent jurisdiction for the service of civil and criminal process. McClung, a coroner in Pennsylvania, investigated the deaths occurring from a blast in the arsenal. He sued the county of Allegheny for his fee covering the investigation. The county defended on the ground that he had no right to hold an inquisition within the arsenal grounds, the jurisdiction of the Government of the United States being exclusive within those grounds. In allowing McClung compensation, the Court said:

" . . . It would not, I repeat, be doing great violence to the language of the proviso to hold the official acts of so important a

public agent, inquiring for the whole body of the Commonwealth into a suspected crime, as embraced within the purview of the enactment; but it is unnecessary in this case to resort to any strained or doubtful interpretation, for whatever were the exclusive rights of the general government, they had not been claimed or asserted. No Act of Congress had forbidden the State to send its appropriate agent to investigate the cause of a great public calamity, and no government official had kept him out of the grounds. Nor is the Federal Government, or any one for it, complaining of the invasion of its exclusive jurisdiction. The coroner's presence and proceedings were attended with the implied if not the express sanction of both governments, and were demanded by the exigencies of the occasion." (Emphasis supplied.)

We cannot believe that cession by Texas and acceptance by the United States of the park were intended to create artificial barriers to such activities. The park is not a sanctuary for criminals nor a hiding place for evidence of their crimes.

SUMMARY

Texas peace officers may enter Big Bend National Park for the purpose of determining whether a crime has been committed over which the State has jurisdiction.

APPROVED:

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Yours very truly,

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